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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 533

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Petitioners

v.

UNITED AIRCRAFT CORPORATION, *Respondent*

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

In framing their Questions Presented without reference to the existence of 28 U.S.C. § 2283, petitioners would ignore the controlling issue in this case. In our view the sole Question Presented is the following:

Whether the Court below was correct in holding that it was precluded by Section 2283 of Title 28 of the United States Code from issuing an injunction, upon the application of various labor unions, to restrain an employer from pursuing an action for damages against said unions in a state court.

STATEMENT OF THE CASE

Petitioners seek review of an affirmance by the Court of Appeals for the Second Circuit of an order by the district court denying an application by various labor unions for a temporary injunction to restrain respondent from proceeding to prosecute two damage actions against petitioners in the Superior Court, Hartford County, Connecticut. The courts below held that such relief was barred by 28 U.S.C. § 2283.

a. Preface

We see no authorization in Rule 21 of this Court, which provides for the filing of "a transcript of record in the case", for the submission of records or portions of records of cases other than the one at bar. Petitioners, however, have seen fit to lodge with the Clerk and to refer in their petition, as part of their statement of the case, to an appendix and brief in a wholly different civil action, No. 28595, in the Court of Appeals for the Second Circuit (Pet. 3, n. 1).[1] Their statement of the case is accordingly cluttered with alleged facts arising from proceedings before the National Labor Relations Board (hereafter referred to as the "Board") and courts which, in our opinion, are irrelevant to the narrow issue before this Court.

Our concern is that the rather detailed statement of the case by petitioners might imply that the asserted facts have been brought to the attention of either the state court or the district court in this action, and that these forums have passed upon their probative

[1] In this Opposition, "Pet." refers to the Petition for a Writ of Certiorari, "Pet. App." refers to the Appendix attached thereto, and "R." refers to the Record certified by the Clerk of the Court below.

value. Thus, at the outset, it should be noted that no testimony has been taken in either forum. The record before each court consists entirely of pleadings, and with respect to the district court, several affidavits supplied by petitioners.

A succinct restatement of the relevant facts of this case, without embellishment, would appear to be in order.

b. Background

This controversy has its roots in a strike undertaken by the petitioners against respondent during the period from June 8, 1960 to August 11, 1960 (R. 169, Pet. App. 2a). Respondent filed suit in the state court alleging that petitioners were engaging in tortious and illegal strike conduct and prayed for injunctive relief (R. 64). On June 13, 1960 the petitioners entered into stipulations, with the approval of the state court, agreeing to desist from mass picketing and from interfering with access to respondent's plants by means of force, violence or intimidation, and to limit the number of pickets at the plant entrances (R. 64-65). On or about June 14, 1960, a regional director of the Board, pursuant to Section 10(j) of the National Labor Relations Act, as amended (hereafter referred to as the "Act"),[2] applied to the United States District Court for the District of Connecticut for an injunction to restrain conduct by the petitioners alleged to be in violation of Section 8(b)(1)(A) of the Act, and on June 16, 1960, the petitioners executed a stipulation by which they agreed to refrain from such acts thereafter (R. 65).

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[2] 61 Stat. 136, 29 U.S.C. § 141 *et seq.*

The strike came to an end on August 11, 1960 (R. 169, Pet. App. 2a), and the respondent and two of petitioners[3] executed strike settlement agreements with respondent which established procedures by which strikers would be eligible for recall to work (R. 119, 169; Pet. App. 2a, 8a). On and after November 21, 1960, Lodges 1746 and 743 filed charges with the NLRB alleging that respondent had illegally refused to reinstate strikers, and on December 12, 1961, filed suits in the United States District Court for the District of Connecticut alleging that the respondent had breached its strike settlement agreements (R. 119, 169; Pet. App. 2a, 8a).

c. The Lawsuits in Controversy

On May 13, 1963, respondent filed in Superior Court of Hartford County, Connecticut, the two actions that petitioners are seeking to have enjoined (R. 2-3, 112). These were suits against petitioners for damages caused by their alleged violence, mass picketing, coercion, intimidation and other misconduct during the strike in 1960 (R. 27-28, 33-34; Pet. App. 16a-17a). On June 4, 1963, respondent filed substituted complaints, adding to the initial complaints the allegation that petitioners had conspired to commit the tortious and illegal acts complained of (R. 27, 33; Pet. App. 16a).

Within a month after the docketing of respondent's suits in the state court, petitioners contested the court's jurisdiction by filing pleas in abatement to the complaint (R. 8-10, 11-12). There they contended that the filing of the suits by respondent constituted an un-

[3] Lodge 1746 and Lodge 743, International Association of Machinists, AFL-CIO.

fair labor practice[4] and that the inclusion of a conspiracy count also constituted an unfair labor practice. They also claimed that the damages sought were not limited to losses attributable solely to tortious misconduct of the petitioners, but encroached upon protected activities as well. On these grounds petitioners urged that federal law had preempted the state court from asserting its jurisdiction.

On November 20, 1963, respondent filed demurrers to petitioners' pleas, taking issue with each of the contentions therein (R. 21-23, 24-26). On January 8, 1964, a memorandum of decision in each case was issued by Judge Pastore of the Superior Court, in which he analyzed the preemption contentions and sustained all grounds of the demurrers (R. 27-32, 33-37; Pet. App. 16a-20a). He noted that the contentions of petitioners that "the scope of the averments of the complaint of plaintiff may be broad enough to include activities of defendants coming under the protection of the NLRB" would present "a question of the sufficiency of the stated cause of action, a matter not now before this court under the plea in abatement, and to present a problem of the admissibility of evidence on trial under appropriately framed issues" (R. 30, 36; Pet. App. 19a) and that the complaint sought damages only for the unlawful conduct of petitioners (R. 32, 37; Pet. App. 20a). Amended pleas in abatement were thereafter filed by petitioners (R. 38-39, 40-41)

[4] At that time the petitioners had filed charges with the NLRB alleging that the filing of the lawsuits constituted an unfair labor practice but the General Counsel had not yet issued a complaint. On August 26, 1963, the General Counsel reversed the Regional Director's refusal to issue a complaint in the matter (R. 7-8). A complaint was issued four days later alleging that the institution of the suits violated Section 8(a)(1) of the Act (R. 3).

and demurred to by respondent (R. 42-44, 45-47). On February 21, 1964, a memorandum of decision was issued by a different judge of the Superior Court, Judge House, who sustained the demurrers (R. 48-55; Pet. App. 21a-27a).

Shortly after the issuance of Judge House's decision, petitioners, on March 2, 1964, filed their complaint in the federal district court, alleging (R. 1a) that

> "The action complained of is assertion by the State of Connecticut of jurisdiction over defendant's suits for damages which are alleged by the General Counsel of the National Labor Relations Board to constitute unfair labor practices prohibited by Section 8 of the Act"

and praying for "a judgment declaring that the State of Connecticut has no legal right to entertain defendant's aforesaid suits and a mandatory injunction compelling defendant to withdraw and dismiss them." (R. 6). They filed at the same time a motion for a temporary injunction to restrain respondent from "taking any steps to prosecute its damage suits" *pendente lite,* and a permanent injunction ordering respondent "to withdraw and dismiss the aforesaid suits" (R. 56). On March 11, 1964, petitioners amended their complaint to allege in a second count that an object of the state court suits was to retaliate against petitioners for filing breach of contract actions in the district court and to coerce withdrawal of such actions (R. 61-62). At the same time a supplemental motion was filed by petitioners for a temporary and permanent injunction (R. 63). An answer to the complaint was duly filed by respondent, contesting various allegations of the complaint and denying that the dis-

trict court had jurisdiction to issue an injunction (R. 112-114).

The district court, on April 24, 1964, denied the application for injunction, holding that it had no jurisdiction in the light of 28 U.S.C. § 2283 (R. 119-123). Petitioners then applied to the court of appeals for an injunction pending appeal (R. 125), but their motion was denied (R. 166). Thereafter, following receipt of briefs and the presentation of oral argument, the court of appeals affirmed the order of the district court (R. 168-175; Pet. App. 1a-7a). The crux of its holding was "Section 2283 applies and prevents the issuance of an injunction." (R. 175; Pet. App. 7a).

ARGUMENT

Petitioners studiously avoid any reference to Rule 19 of this Court in their attempt to justify the issuance of a writ of certiorari. The absence of any such express reference is significant, for an analysis of the matter reveals that no grounds for the issuance of a writ exist.

This Court in *Amalgamated Clothing Workers* v. *Richman Brothers*, 348 U.S. 511 (1955), in a situation identical to the case at bar for all relevant purposes, ruled explicitly that the relief that petitioners now seek was precluded by statute. There a labor union requested a federal district court to issue an injunction to restrain a state court from proceeding with a suit by an employer against it, on the theory that federal law had preempted the subject matter in controversy and the state court was without jurisdiction. This Court, in agreement with both the district court and court of appeals, held that federal courts were

prohibited by the statutory provisions of 28 U.S.C. § 2283 from granting injunctive relief.[5]

Petitioners have not attempted to draw any factual distinction between the case at bar and *Richman*. They have not suggested that there is any conflict among the courts of appeals, or that the court below has decided the case in a manner which conflicts with the holding in *Richman*. Nor do they assert that this Court has not yet resolved the applicability of Section 2283 to their situation. Their only ground for the petition lies in their quarrel with the *Richman* decision itself,[6] and, within a decade of its issuance, they would have this Court overrule it.

1. The Decision Below Is Plainly Correct

The decisions of the district court and court of appeals below were predicated squarely upon this Court's decision in *Richman*. As the court of appeals correctly observed (R. 174; Pet. App. 6a):

> "Nothing has occurred since Richman which casts any doubt on what the Supreme Court there said. The Court has not suggested that there is any less reason today for having confidence in the state courts."

On the authority of the then recently decided case of *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, (1955), this Court in *Richman* started with the assumption

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[5] Section 2283 provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

[6] The third question presented in the petition (p. 2) is "Whether Amalgamated Clothing Workers v. Richman Bros. Co., 348 U.S. 511 (1955), has been undermined and should be reconsidered."

that the conduct in controversy was subject to the Taft-Hartley Act and therefore outside state authority. With that premise in mind, the Court held that a federal district court can not, at the request of a private party, enjoin the attempt to secure relief in the state proceedings. Section 2283 of Title 28 of the United States Code bars the way.

Petitioners, on the basis of their reading of this Court's decisions in *Guss, Garmon,* and *Interlake,*[1] would have this Court concede that it erred in *Richman.* These cases, petitioners tell us, have undermined *Richman* by circumscribing the situations in which state courts may assert their jurisdiction by making it clear "that if encroachment is 'arguable', then the state court must relinquish jurisdiction." (Pet. 12). In view of the Court's assumption in *Richman* that the conduct in question was subject to the Taft-Hartley Act, it is difficult to see how other cases also holding that the conduct in controversy was subject to the Taft-Hartley Act, throw either light or shadow on *Richman.*

But petitioners have fundamentally misconceived the nature of the Court's decision in these cases. It was plainly expressed in *Interlake,* 370 U.S. at 177:

> "It is the petitioner's contention that the issue to be determined in this case is not whether the state courts correctly decided their 'labor organization' status, but whether the state courts were free to finally decide that issue at all. *The petitioners contend that the principles of the Garmon decision confined the state court to deciding only whether the evidence in this case was sufficient to*

[1] *Guss* v. *Utah Labor Relations Board,* 353 U.S. 1 (1957); *San Diego Unions* v. *Garmon,* 359 U.S. 236 (1959); *Marine Engineers Association* v. *Interlake Co.,* 370 U.S. 173 (1962).

> *show that either of them was arguably a 'labor organization' within the contemplation of § 8(b). We agree,* and hold that the *evidence* was sufficient to deprive the Minnesota courts of jurisdiction over this controversy." (Emphasis supplied).

The holding of *Interlake* is unequivocal. State courts are not, as petitioners would have it, shorn of their traditional power to hear evidence in their effort to determine the presence or absence of jurisdiction. Obviously the factual questions inherent in a preemption matter can only be decided when all the evidence is adduced.

Far from discrediting *Richman,* these cases support the proposition established in that decision that the troublesome problems of federal preemption can best be dealt with after full hearing by the state courts themselves, subject to ultimate review by this Court. Each of the three cases relied upon by petitioners reached this Court after a definitive ruling by the highest tribunal of the state, *Guss* on appeal from the judgment of the Utah Supreme Court, *Garmon* on writ of certiorari to the California Supreme Court, and *Interlake* upon writ of certiorari to the Minnesota Supreme Court. Indeed, all but a handful of the 29 decisions of this Court in the labor-management field cited by petitioners reached this court by writ of certiorari to or appeal from the appellate courts of the state.[8] Only *Capital Service* v. *N.L.R.B.,* 347 U.S. 501

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[8] The exceptions were cases which, unlike the case at bar, had their origin in the federal district court, rather than the state court, *e.g., Local 20, Teamsters* v. *Morton,* 377 U.S. 252 (1964) (action for damages under § 303 of Taft-Hartley Act); *St. John* v. *Wisconsin Employment Relations Board,* 340 U.S. 411 (1951); and *American Federation of Labor* v. *Watson,* 327 U.S. 582 (1946) (statutory three judge court convened to pass upon validity of state statute).

(1954) and *Richman* dealt with attempts by a federal court to enjoin state court proceedings within the framework of 28 U.S.C. § 2283.

Petitioners cite *In re Green*, 369 U.S. 689 (1962), and *Local 438, Construction and Laborers Union* v. *Curry*, 371 U.S. 542, (1963), in support of their assertion that "state court proceedings which encroach upon the preempted field are no longer, as in *Richman's* day, 'allowed to run [their] course.' " (Pet. 13). To the contrary, each did run its course to the highest tribunal of the state, reaching this Court by writs of certiorari issued to the supreme courts of Ohio and Georgia. In any event, the vice in the state court contempt citation reversed by this Court in *In re Green*, was the deprivation of due process in that court's failure to afford the party cited for contempt with any hearing whatsoever as to whether its jurisdiction was preempted by federal law. *In re Green*, like *Interlake*, champions the necessity for developing a complete record in the state court.[9]

Petitioners likewise would interpret the Court's decision in *Curry* far too broadly. The *Curry* case merely presented the question of whether a temporary injunction approved by the state supreme court constituted a final judgment for purposes of review by this Court. This Court held that it was, pointing out that the issue of jurisdiction had been finally decided by the highest court of the state, that that court had

[9] There is no intimation in this Court's *In re Green* decision that had the state court held a hearing, its contempt citation would have been reversed. This Court pointed out, 369 U.S. at 692, that it was impossible to determine from the truncated record of the case whether the dispute was subject to the jurisdiction of the NLRB.

passed upon the merits of the case as well, and that there was nothing more of substance to be resolved by the trial court.

The case at bar demonstrates the wisdom of the policy of federal self-restraint enunciated in *Richman*. Notwithstanding the *melange* of representations gleaned from other cases and made by petitioners to this Court in their statement of the case,[10] the record in the state court is barren of evidence. No testimony whatsoever has been adduced there. A complaint has been entered, and motions addressed to the court's jurisdiction have been made and opposed. No answer has yet been filed. Petitioners have concentrated on vigorously attacking the court's jurisdiction, and the lower court on two separate occasions, after receipt of briefs and hearing of argument, has for the time being rejected their jurisdictional assertions. The court, in adherence to the precepts of *Interlake* and *In re Green*, has properly refused to rule summarily on matters which it believes can more feasibly be developed at trial "under appropriately framed issues" (R. 30, 36; Pet. App. 19a). The state supreme court has not yet been given an opportunity to pass on the jurisdictional question.

Dissatisfied with the result so far in the state court, petitioners would try another forum. And so the pre-

[10] We refer to the assorted documents and pleadings filed in various civil actions and NLRB cases (Pet. 3, n. 1), as well as affidavits which remain untested by cross-examination (R. 64-99, 100-111). Indeed, by comparing the record of this case in the courts below with the petitioners' statement of the case here, it is apparent that the petitioners have proposed far more representations of fact to this Court than they saw fit to present to the district court.

diction of this Court in *Richman*, 348 U.S. at 519, is borne out:

> "A district court's assertion of equity power or its denial may in turn give rise to appellate review on this collateral issue. There may also be added an element of federal-state jurisdiction which may be trusted to be exploited and to complicate, not simplify, existing difficulties."

Petitioners would merely substitute one court for another as the forum in which to try their case. If the district court were to have jurisdiction to enjoin the state court, petitioners and respondent would presumably elicit there the same testimony and advance the same arguments concerning preemption that otherwise would be presented to the state tribunals.

There is no reason to assume now, any more than when *Richman* was decided, that state courts are not competent to pass upon the impact of alleged federal preemption upon their jurisdiction. Petitioners are merely taking the first step of a *non-sequitur* when they assert (Pet. 12) that "a possibility of conflict between federal and state regulation establishes arguability; state power is superseded until all possibility of conflict is removed." For, as the court below correctly observed (R. 174; Pet. App. 7a): "The fact that the situations in which the state courts lack jurisdiction are somewhat clearer, because of the arguability rule, does not suggest the result for which plaintiffs contend, to wit, that federal courts may enjoin state courts from deciding the issue of arguability." Indeed, petitioners have couched their contentions to the superior court in terms of "argu-

ability" (R. 9, 11, 30, 36; Pet. App. 18a-19a). Presumably any jurisdictional issues to be addressed by petitioners to the state supreme court will be drawn in similar fashion. Apart from indicating their displeasure with the decisions of the state court, petitioners have not sought to explain, either to this Court or the court below why the state courts are unfit to decide that issue (R. 172; Pet. App. 5a).

2. No Issue of Importance Is Raised By Petitioners

No issue of conceivable importance is raised in the petition, either in terms of impact upon the petitioners or upon the administration of the Act generally. As for petitioners, the worst that can befall them is that they must continue to defend their strike misconduct in the state courts. If a judgment for damages is awarded against them, they can pursue their preemption contentions on appeal to the supreme court of the state and by petition for writ of certiorari before this Court. The potential injury to them in fact is far less than that to which the petitioner in *Richman* was exposed, for there this Court's affirmance of the lower court left standing an injunction issued by the state court.

Here the possibility that the district court would restrain the state court if it had jurisdiction to do so is remote indeed, for nothing which even borders on irreparable injury has been shown. All that is called into question in the state court is the issue of damages for alleged tortious conduct attending a strike in 1960. Aside from the inconvenience of defending their conduct in court, petitioners point to nothing more substantial than the fancied invasion of a legal right which

can, if their contentions are well founded, be fully remedied on appeal.[11]

With respect to the general administration of the Act, protection against any serious conflict between state courts and the Board is amply afforded by this Court's holding in *Capital Service* v. *NLRB*, 347 U.S. 501 (1954). If the NLRB should view any such asserted conflict as warranting immediate remedial action, upon issuance of a complaint it may apply to the federal district court pursuant to Sections 10(j) or 10(l) of the Act for an injunction, and the district court in its discretion may enjoin the state court from proceeding.

In the context of this case, where the petitioners' complaint is predicated on an asserted conflict arising from the issuance of a complaint by the General Counsel (R. 1a, 3, 5), it is anomolous to suggest that the rights of a complainant are not adequately safeguarded by the General Counsel. His failure to invoke the jurisdiction of the district court by application for injunction can only mean that he does not subscribe to petitioners' notion that the continuation of the state court suits would "jeopardize and perhaps altogether defeat the federal mechanism for elimination of unfair labor practices" (Pet. 14). That deci-

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[11] Nor will their Section 301 actions pending in the district court suffer. Somewhat as an afterthought petitioners amended their complaint to allege that respondent's resort to the state court infringed their rights in the 301 suits. Then, before concluding their petition to this Court, they added a final paragraph (Pet. 22) injecting jurisdiction through the 301 actions. The district court was unimpressed, pointing out that in fact petitioners have not been deterred in prosecuting those suits, and that the state court and 301 actions do not conflict (R. 121-122; Pet. App. 10a).

sion on a matter of public policy is, we think, entitled to controlling weight.

CONCLUSION

For the aforementioned reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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